IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO.1655 OF 2000

For Approval and Signature:

HON'BLE MR.JUSTICE RAVI R.TRIPATHI

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

VALJIBHAI MAGANLAL SALVI

Versus

MANAGING DIRECTOR,
GUJARAT WATER RESOURCES DEVELOPMENT CORPORATION LTD.

Appearance:
1. Special Civil Application No. 1655 of 2000
PARTY-IN-PERSON for Petitioner
MR. PARESH UPADHYAY for Respondent

CORAM : HON'BLE MR.JUSTICE RAVI R.TRIPATHI

Date of decision: 11/03/2004

ORAL JUDGEMENT

1. In this petition, the petitioner, appearing as party-in-person, has challenged the order passed on 31st December, 1996 whereby one increment with future effect

is stopped. The petitioner, party-in-person, has challenged the said order on various grounds like there is a delay in holding the inquiry; there is a delay in entertaining the appeal; there is no preliminary inquiry held; and, the inquiry is conducted only with a view to see that the petitioner is deprived of the benefit flowing from the judgement dated 26th April, 1996 passed by this Court (Coram:R.K.Abichandani, J.) in Special Civil Application Nos.2974/1994, 2260/1993, 2872/1995 and 2873/1995.

2. The facts of the case are that the petitioner was served with a chargesheet on 14th December, 1990 for an incident, which had taken place on 24th October, 1989. This chargesheet was replied by the petitioner by a letter dated 2nd March, 1991, which is referred to in paragraph-2 of the petition memo, this petition memo is in regional language-Gujarati. A copy of the said reply dated 2nd March, 1991 is not produced on record, Mr.Paresh Upadhyay, learned Advocate for the respondent, Gujarat Water Resources Development Corporation Limited (hereinafter referred to as "GWRDC" for short), made available for perusal. Mr.Upadhyay pointed out that by this reply, the petitioner specifically prayed to the authorities that, `as the matter is subjudice before the Criminal Court, the inquiry may not be proceeded with until the criminal case is decided'. In fact, the opening paragraph of the reply of the petitioner reads as under:

> "It is well known that for any offence, double inquiry cannot be undertaken under the Disciplined and Appeal Rules, 1984. When a criminal case/inquiry is in process, a chargesheet cannot be issued to a person for the same offence. As the chargesheet is served in disregard of the law, I have not replied the same within time."

The last paragraph of the letter dated 2nd March, 1991 reads as under:

> "Therefore, it is requested that until the case in the Court of Deesa is going on, there is no purpose of my filing any reply to this subject. In this subject, no inquiry is made. The chargesheet, which is served to me, is false, unconstitutional and at the instance of somebody and, therefore, the same may please be withdrawn."

Mr.Upadhyay, the learned Advocate, submitted that looking to the background of the petitioner and the fact that series of applications, petitions, contempt petitions and various other applications were preferred by the petitioner, the respondent thought it fit not to proceed with the departmental inquiry. It so happened that when the aforesaid matters came to be decided by this Court by judgement and order dated 26th April, 1996 wherein the Court was pleased to direct the respondent-GWRDC to consider the question of giving deemed date of promotion to the petitioner as Deputy Executive Engineer and also as Executive Engineer, it was required to be pointed out to the Court that there are pending inquiries against the petitioner. Mr.Upadhyay submitted that in fact, the petitioner approached this Court for non-compliance of the order without waiting even for few days. To illustrate this, he submitted that when it was directed by this Court in the aforesaid judgement that, `the above exercise of giving deemed date to the petitioner in the cadre of Deputy Executive Engineer and Executive Engineer should be completed and necessary orders be passed in light of this judgement, within one month from the date of receipt of the writ of the order', the petitioner filed an application, being Miscellaneous Civil Application No.249 of 1996, complaining about non-compliance of the order of this Court dated 26th April, 1996 immediately on expiry of the period of one month.

3. Even before the said judgement was rendered, the petitioner had approached this Court by filing Special Civil Application No.2874 of 1995 for quashing of the inquiry pending against the petitioner. The said Special Civil Application No.2874 of 1995 was disposed of by this Court (Coram:M.S.Parikh, J.) by order dated 18th July, 1995 directing the respondent-GWRDC to expedite the pending inquiry/inquiries against the petitioner and dispose of as expeditiously as possible, preferably within a period of four months from the date of receipt of writ. As the inquiry could not be completed within the prescribed period of four months, the petitioner filed Miscellaneous Civil Application No.93 of 1996 in Special Civil Application No.2874 of 1995. He also filed Miscellaneous Civil Application No.256 of 1996 in Special Civil Application No.2874 of 1995. He also filed Miscellaneous Civil Application No.323 of 1996 in Special Civil Application No.2874 of 1995. These matters are mentioned not because the Court is tired of entertaining these applications, but, to show the conduct of the party-in-person, who has formed a habit of approaching the Court to create pressure on the respondent-GWRDC. It

is in light of these facts, the respondent, to avoid further litigation, after having received reply dated 2nd March, 1991 to the chargesheet dated 14th December, 1990 thought it fit not to proceed with the inquiry. It was only when a direction was issued by this Court by order dated 18th July, 1995 to complete the inquiry within four months, the respondent-GWRDC started with the inquiry. Again in the Miscellaneous Civil Application, a statement was required to be made on 6th November, 1996, by the respondent that the inquiry will be undertaken and completed as early as possible, hence, the Inquiry Officer was appointed on 7th November, 1996, who completed the inquiry on 21st November, 1996 and submitted its report on 6th December, 1996 in which the petitioner was held guilty of the charge levelled against him and, therefore, the petitioner was issued second show cause notice on 7th December, 1996 to which the petitioner replied on 23rd December, 1996. A copy of that reply is on page 27, Annexure-9 to the application. The language used by the petitioner in that reply shows the extent to which he has become unreasonable. He has pointed out certain illustrations of irregularities at large scale prevalent in the respondent-organisation and has complained that the respondent is not taking any action against any person in any such irregularities. He has also stated that the respondent has chosen the petitioner only to take action against him. It will not be out of place to refer some of the illustrations, which are quoted by the petitioner, more particularly, the language used so as to reflect the conduct of the petitioner.

3.1 The first incident, which is quoted by the petitioner, relates to one Shri A.N.Modi, who was appointed as a Presenting Officer in this inquiry. It is reported that at present, Shri A.N.Modi is working as Executive Engineer, but, at the relevant time, he was Deputy Executive Engineer at Mehsana and at that time, a brand new Jeep bearing Registration No.GAQ-5737, valuing about Rs.2 lakhs, was stolen. The petitioner has stated that, "... if this jeep would have been sealed by the then Deputy Executive Engineer, the jeep would not have been stolen ..."; that the respondent-GWRDC has not taken any action against this officer, `for not sealing the jeep'.

A person of the rank of Deputy Executive Engineer, claiming the promotion to the post of Executive Engineer, if not able to maintain the balance of his mind, uses such language which does not befit to an officer of this rank, not able to control his feelings,

the matter is serious warranting consideration.

3.2 The second illustration, which is cited in the said reply, is about another similar incident, which took place in the year 1986-87, wherein a jeep bearing Registration No.9186 was also stolen. According to the petitioner, the said jeep was stolen only on account of negligence on the part of the then Deputy Executive Engineer. It is stated by the petitioner that, `if that jeep would have been sealed by the concerned Deputy Executive Engineer, the jeep would not have been stolen'.

3.3 The extent of unreasonableness and the extent of not maintaining the balance of mind is reflected from one more incident wherein an incident of theft of cement is reported during the tenure of one Shri K.L.Naik, Deputy Executive Engineer at Ahmedabad. The petitioner has stated that, `if that stock of cement would have been sealed by the Deputy Executive Engineer, theft of cement would not have taken place.'

The petitioner seems to have lost sense of proportion when he suggested that the amount, which was stolen while one Shri Bhimani, Senior Clerk, was in-charge of it, should have been recovered from the amount of fund payable to Shri Bhimani and as Shri Bhimani has expired, the same should be recovered from his properties by way of arrears of revenue.

4. The petitioner was called upon to reply the second show cause notice, which he could have replied on merit in reasonable manner, instead of pointing out the aforesaid incidents and offering his suggestions. After reply to the second show cause notice was received, the petitioner was granted hearing by the then Chairman of the respondent-GWRDC in the course of hearing of the appeal filed by him on 10th January, 1997. It is also required to be noted that as there was some delay in hearing of that appeal, the petitioner wrote various applications on the following dates:

(i) 25.02.1997;
(ii) 26.06.1997;
(iii) 08.08.1997;
(iv) 22.08.1998;
(v) 04.09.1998;
(vi) 06.05.1999; and,
(vii) 29.12.1999

Besides that, he also approached this Court by filing Miscellaneous Civil Application No.18 of 2000 in

Special Civil Application No.2669 of 1997, which was pending before this Court praying that the inquiry against the petitioner be quashed and set aside. Civil Application No.749 of 2000 was also filed in the pending petition, being Special Civil Application No.1040 of 1998. The hearing was granted by the Chairman of the respondent-GWRDC on 24th November, 1997 and it is the case of the petitioner that the Chairman had orally declared him innocent, but then, he did not transcribe the said decision and the matter had remained pending. The order dated 18th February, 2000 whereby the appeal of the petitioner is disposed of is on record; it is stated therein that taking into consideration the detailed representation made by the petitioner, the Chairman has thought it fit to place the appeal before the Managing Board of the respondent and, therefore, he made a proposal to that effect on 3rd November, 1999. The Managing Board, after taking into consideration the matter in detail and taking into consideration the fact that the petitioner has already retired from service, thought fit to appoint a Committee for examining the question as to what will be appropriate punishment. Accordingly, a committee was appointed comprising of one Mr.G.R.Patel, Executive Engineer, Mehsana, assisted by two Class-I Officers. The said Committee considered the matter and submitted its report to the Chairman, who on careful consideration of the same, passed the order of dismissing the appeal on 18th February, 2000.

5. The petitioner, party-in-person, submitted that he does not have a copy of the Rules with him just now, but then, under the Rules, the Chairman has no power to refer the matter to the Managing Board and the Managing Board has no power to refer such matter to any such Committee. The petitioner has a grievance against the appointment of Shri G.R.Patel in the Committee.

6. Coming back to the merits of the case, the charge against the petitioner is that on the fateful day i.e. on 24th October, 1989, the petitioner did not take care to see that the cash, which was in-charge of one Shri P.C.Mehta, is placed in safe custody i.e. in a cupboard. It is the case of the petitioner that violating the instructions given by the petitioner, Shri P.C.Mehta made certain payments to the employees of the Corporation (GWRDC) and thereafter, said Shri P.C.Mehta, out of tiredness, left the cash box without being sealed on the table itself and did not put it in the cupboard. The submission of the petitioner is that in that view of the matter, it is Mr.P.C.Mehta who is responsible and the petitioner is not even remotely responsible for the theft, which took place on that day (this amount was

recovered from chowkidar, who had stolen it).

7. The Inquiry Officer, in his well considered report, has held that in view of the statement of Mr.P.C.Mehta dated 15th November, 1989, the petitioner is not found guilty of getting down from the jeep on the way; that the petitioner had instructed Shri P.C.Mehta not to make payment; that the petitioner has countersigned, the payment recorded in the cash book. But then, the petitioner is guilty of not having discharged his duties of instructing the subordinate staff - Shri P.C.Mehta, to keep the cash in the treasury. The Inquiry Officer has given his opinion that if the petitioner had remained more vigilant and had discharged his duties more diligently, the incident could have been avoided. To that extent, the petitioner is responsible for the incident, which had taken place. This aspect is taken into consideration by the Disciplinary Authority and thereafter, the higher authority of the Corporation i.e. Chairman, who, in turn, placed the matter before the Managing Board, who also has taken into consideration the fact that the petitioner has retired from service, referred the matter to the Committee and on having received the report from the Committee, the Chairman has dismissed the appeal.

8. Taking into consideration the overall facts of the case, this matter should not detain this Court any further and the order, which is passed against the petitioner, does not warrant any interference at the hands of this Court. Hence, this petition is dismissed. Rule is discharged. No order as to costs.

(Ravi R. Tripathi, J.)
kamlesh*